

EXHIBIT H

IN THE UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF MASSACHUSETTS

RONALD & PATRICIA SHAMON,)	
)	
Plaintiff,)	
-v-)	DOCKET NO.
)	04-11674-WGY
UNITED STATES OF AMERICA,)	
)	
Defendant.)	

THE ORAL DEPOSITION OF RONALD SHAMON, held pursuant to Notice, and the applicable provisions of the Federal Rules of Civil Procedure, before Diana Strzeminski, a Court Reporter and Notary Public, within and for the Commonwealth of Massachusetts, at the offices of the United States Attorney, 1 Courthouse Way, Suite 9200, Boston, Massachusetts, on Wednesday, March 16, 2005, commencing at 12:52 p.m.

ORIGINAL

APEX Reporting
(617) 426-3077

1 procedure he was about to perform?

2 A No. He just asked me, like I told you, he just
3 asked me, "When was the last time you had one of these?"
4 And he was holding it in his hand.

5 And I said, "It was about seven years ago." And
6 he said, "Well, now you're going to get it."

7 Q Okay.

8 A That's it. I was kind of -- a little bit nervous
9 with that.

10 Q When you arrived at the hospital that day, did any
11 doctor go over with you what the sigmoidoscopy procedures
12 were going to entail?

13 A Nothing. No one.

14 Q Did anyone obtain your consent for the procedure
15 before it was taken?

16 A I don't remember signing anything. I don't
17 remember signing anything at all.

18 MR. WILMOT: Please mark this as the next Exhibit.

19 (Exhibit No. 2 was marked for
20 identification.)

21 BY MR. WILMOT:

22 Q I'm showing you what is marked as Exhibit No. 2.
23 Would you review that and let me know when you're finished,
24 please?

25 (The witness examined the document.)

1 A Read it.

2 Q Do you recognize this document?

3 A No.

4 Q Before you is a consent form. Obviously, there
5 are no signatures on this form.

6 But is it your testimony that you've never seen
7 this form before?

8 A I would have recognized this -- was that supposed
9 to be on all the forms, this top writing here? I don't know
10 what--

11 Q I'm just asking you a question.

12 A No. I never saw that. No. I'm really going to
13 see that.

14 Q Just so we're clear, the day that you arrived at
15 the hospital, October (sic) 7th, 2001, no one at the
16 hospital obtained your consent, your written consent to
17 perform the sigmoidoscopy procedure?

18 A I don't remember signing anything. No one talked
19 to me about this material.

20 Q And is it also your testimony that on December
21 7th, 2001, no one discussed what occurs during a
22 sigmoidoscopy procedure?

23 A No one discussed that at all.

24 Q And is it also your testimony that on December
25 7th, 2001, that no one explained to you what the potential

1 complications are with the sigmoidoscopy procedure?

2 A No. No.

3 Q "No," that's not your testimony, or no one--

4 A No one ever mentioned what the complications would
5 be. No.

6 Q Okay. If you knew that rectal perforation was a
7 potential risk with a sigmoidoscopy procedure, would you
8 have refused to have the procedure done?

9 A If I knew, by looking at that, what I felt about
10 the procedure -- I didn't want to have it done to begin
11 with. But if I started to have -- somebody go through this
12 like here, then I think I would have walked home -- walked
13 out of there.

14 Q So if a doctor told you that a potential risk was
15 perforation of the colon, you would have said, "I don't want
16 this procedure to occur."

17 MS. SUGARMAN: Objection. You can still answer
18 the question.

19 THE WITNESS: I never had a problem with my --
20 none of the family ever had problems with the rectum; no
21 colon cancers or anything like that. And I thought it was a
22 foolish thing to do to begin with, even seven years prior to
23 that.

24 BY MR. WILMOT:

25 Q I'm just trying to be clear--

EXHIBIT I

09/19/2001 13:53 ** CONTINUED FROM PREVIOUS PAGE **

Patient was a no show for clinic today.

Comments:

Signed by: /es/ SIMONA RETTER-BURCH MD
staff physician 09/19/2001 13:53

NOTE DATED: 10/25/2001 14:17 MED/GASTROENTEROLOGY
VISIT: 10/25/2001 14:16 ZZZBO GI ENDOSCOPY PROCEDURE
Telephone encounter note:

Unable to reach patient directly at his home tel number, so left message on his answering service regarding upcoming flexible sigmoidoscopy appointment on 12/07/01 at 11:30 AM at JP VA. Pt informed on message that he will receive letter about this appt with info about the flex sig procedure and how to prepare for it. Additionally, he will receive 2 Fleet Enemas in mail -- order put in computer today for pt to take 1 followed by second 1-3 hrs before procedure. Pt asked to call 617-232-9500, ext. 4766 if unable to keep appointment.

Marisa Figueiredo, PA-C

Signed by: /es/ MARISA FIGUEIREDO PA-C
GI PHYSICIAN ASSISTANT 10/25/2001 14:20

NOTE DATED: 10/30/2001 15:32 PATIENT EDUCATION: ENDOSCOPY PROCEDURE
VISIT: 10/30/2001 15:32 BO GI ENDOSCOPY NURSE 2603

Nursing Diagnosis: Knowledge deficit related to procedure

S:

O: Procedure pt scheduled for:

COLO____
EGD____
FLEX SIG_X__12-7
OTHER_____.

INSTRUCTIONS MAILED TO PATIENT

** THIS NOTE CONTINUED ON NEXT PAGE **

SHAMON, RONALD ROBERT BOSTON HCS
021-26-8139 DOB:04/27/1936 Pt Loc: OUTPATIENT

Printed:11/18/2003 15:34
Vice SF 509

RS0020

10/30/2001 15:32 ** CONTINUED FROM PREVIOUS PAGE **

A: INSTRUCTIONS MAILED

P: Re-evaluate patient/significant other's knowledge on day of exam.

Signed by: /es/ DAN LORDAN
RN 10/30/2001 15:33

NOTE DATED: 11/13/2001 11:09 CONSULT/EYE/OPTOMETRY

VISIT: 11/09/2001 14:15 ZZBR OPT FRIDAY

Pt here walkin c/o lump on upper and lower left eye lid. upper lump for many months. lower lump for a few weeks. -pain, -red eye, -discharge.

vasc 20/30 ph 20/25
20/30 ph 20/25

slax. 1/1 2+ mgd ou

1 small chalazion left upper lid nasally, 1 large chalazion left lower lid temporally.

k: arcus ou
a/c d and q ou
i: flat and cl ou

a. chalazion left upper and lower lid. pt ed re warm compress and massage. rtc if red, discharge, enlargement, pain or decreased vision. call ibn 1 mos if no resolution for ophthalmology consult.

pt ed that he should request consult for cee from pcp.

Signed by: /es/ Kevin C. Toolin OD
attending optometrist 11/13/2001 11:14

NOTE DATED: 11/21/2001 13:22 FLU VACCINE/NURSING

VISIT: 11/09/2001 13:13 BR FLU SHOT (W/I) CLINIC

S: Present for Influenza vaccine.

No S/S of a cold

No HX of Egg Allergy

O: Influenza vaccine 0.5ML IM
Manufacturer: Aventis Pasteur
Lot Number: U0597AA []

** THIS NOTE CONTINUED ON NEXT PAGE **

SHAMON, RONALD ROBERT
021-26-8139 DOB: 04/27/1936

BOSTON HCS
Pt Loc: OUTPATIENT

Printed: 11/18/2003 15:34
Vice SF 509

RS0021

EXHIBIT J

Chi Zhang

1

Volume: I

Pages: 1-108

Exhibits: 1-5

IN THE DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS
Civil Action No. 04-CV-11674-WGY

----- x
RONALD SHAMON and PATRICIA SHAMON,
Plaintiffs,

v.

UNITED STATES OF AMERICA,
Defendant.
----- x

DEPOSITION OF DR. CHI ZHANG
Wednesday, February 23, 2005
11:04 a.m.

HANIFY & KING
One Beacon Street
Boston, Massachusetts

Reporter: Marianne R. Wharram, CSR/RPR

1 conversation.

2 A. He asked me how much I remember this.

3 Q. What did you tell him?

4 A. I said at that point, I said no, I couldn't
5 recall anything at all.

6 Q. You had absolutely no recollection of the
7 procedure --

8 A. Right.

9 Q. -- that was performed on Mr. Shamon?

10 A. Yeah. We had two conversations.

11 Q. You'll have to -- you can talk to
12 Mr. Wilmot outside at some point, but now you need
13 to just speak to me.

14 A. Yeah, I think the first conversation, he
15 informed me that -- said you'll be called as a
16 witness in deposition, and he'll fax me this
17 document. Then he faxed it to me. And the second
18 time, we set up a time and called each other again.
19 I forget who called who, but we got ahold of each
20 other.

21 Q. And at that time, you had a chance to
22 review what he sent you?

23 A. Exactly. Yeah. Yeah. At that time, I
24 said I read this, but I cannot recall the details

1 for the procedure.

2 Q. So having read what Mr. Wilmot sent you --

3 A. Right.

4 Q. -- it still didn't trigger any memory of
5 the procedure?

6 A. Right. Right. Yeah. I even went back to
7 my own record to pull out the procedure record,
8 review that, and at that point, when we had a
9 conversation, at that point, I said, you know, I
10 couldn't recall those details.

11 Q. When you say you couldn't recall the
12 details, do you recall generally the procedure?

13 A. What -- because -- okay, I remember now.
14 Mr. Wilmot asked me specifically, he said was
15 Dr. Pedrosa there when you performed the procedure.
16 I said you know, I don't remember the details, but
17 I know the general rules. I never perform a
18 procedure without attending present.

19 Q. So your recollection is that at the time
20 this procedure was performed in December 2001 --

21 A. Right.

22 Q. -- was there some rule in place that under
23 no circumstances were you as a fellow to perform a
24 procedure such as this without an attending

1 sigmoidoscopy procedure where the attending had to
2 come and provide you with some assistance?

3 A. No, I don't recall that.

4 Q. But that was the reason they were there,
5 correct?

6 A. Yes.

7 Q. That if you ran into difficulty because you
8 were in training --

9 A. Yes.

10 Q. -- that they would be there to help; is
11 that correct?

12 A. Yes.

13 Q. You mentioned your own records. Do you
14 have your own records relating to the treatment
15 that you provided Mr. Shamon?

16 A. Yes.

17 Q. Okay. And what records do you have?

18 A. Um, it's the procedure note. This one.
19 These two pages.

20 Q. Let me ask you this. Prior to performing
21 -- and I understand from your prior testimony that
22 you don't have a recollection of the specific
23 procedure that you performed on Mr. Shamon; is that
24 correct?

1 A. Yes.

2 Q. Was it your custom and practice at the time
3 to discuss with the patient, with a patient such as
4 Mr. Shamon, the risks associated with the
5 procedure?

6 A. Could you say it again?

7 Q. Was it your practice --

8 A. Mm-hmm.

9 Q. -- back in December of 2001 --

10 A. Right.

11 Q. -- to discuss -- to discuss with the
12 patient the risks associated with the procedure
13 prior to performing it?

14 A. You mean -- we do. We do to, I mean,
15 obtain consent from the patient, yeah.

16 Q. You obtain the patient's informed consent
17 prior to performing a procedure; is that correct?

18 A. That's right, yeah.

19 Q. So was it your practice, back in December
20 of 2001, to sit down with a patient such as
21 Mr. Shamon and discuss with him the risks
22 associated with the procedure?

23 A. I think what happened at the VA is that
24 patients show up in the endoscopy center, and at

1 that time, before they enter room, we talk to the
2 patient, the procedure room.

3 Q. So the practice back in December of 2001
4 was they showed up in the endoscopy department?

5 A. Right.

6 Q. And prior to going in and actually
7 performing the procedure, you had the discussion
8 with the patient about the risks associated with
9 the procedure?

10 A. That's correct.

11 Q. Now, you don't recall specifically in this
12 instance any conversation you had with Mr. Shamon
13 about the risks associated with the procedure; is
14 that correct?

15 A. No, I don't. I don't recall. Right.

16 Q. Was there a specific consent form that the
17 VA hospital used; I mean, a standard consent form?

18 A. Yes.

19 Q. And was that a generic form, or was it
20 geared towards sigmoidoscopy procedures?

21 A. I think it's geared towards sigmoidoscopy.
22 I'm not exactly sure.

23 Q. All right. So your recollection was --

24 A. Right.

1 Q. -- was that there was a specific consent
2 form for a sigmoidoscopy procedure; is that
3 correct?

4 A. That's correct.

5 Q. And did that consent form outline in detail
6 the risks associated with the procedure, to your
7 recollection?

8 A. No. No, I don't.

9 Q. When you say no, you don't --

10 A. I don't recall that specific as to what was
11 written down.

12 Q. Just for the record, I don't see a consent
13 form, although one is referenced in these records.
14 I think I sent Mr. Wilmot a letter requesting the
15 consent form. Let me ask you this. The consent
16 form is on a separate piece of paper; is that
17 correct?

18 A. Yes.

19 Q. Okay. And I note that the VA hospital
20 records are computerized records; is that correct?

21 A. For the procedure report, right.

22 Q. Is there a separate -- do they maintain a
23 separate written record independent of the computer
24 records for a patient?

EXHIBIT K

COPY

PAGES 1 - 159

EXHS. 1 - 6

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

* * * * *

Ronald Shamon and *

Patricia Shamon * Civil Action

v. * No. 04-11674-WGY

United States of America *

* * * * *

Deposition of Marcos Dacunha Pedrosa, M.D.

Monday, March 14, 2005

Hanify & King, P.C.

One Beacon Street - 21st Floor

Boston, Massachusetts 02108

----- J. EDWARD VARALLO, RMR, CRR -----

COURT REPORTER

FARMER ARSENAULT BROCK LLC, BOSTON, MASS.

617.728.4404

Marcos Dacunha Pedrosa, M.D.

33

1 where I didn't have a chance to meet Mr. Shamon
2 before the procedure. The consent form --

3 Q. Let me just hold you there. When you say
4 you didn't have a chance, what do you mean by that?

5 A. Because I was probably doing something
6 else. And again, having this team approach, the
7 consent form may be obtained by the fellow who will
8 actually be performing the -- You know,
9 sigmoidoscopies are considered simpler procedures
10 than the other ones that we actually perform. And
11 because of that, the fellow may obtain the consent
12 form on his own.

13 Q. Do you recall who actually obtained
14 Mr. Shamon's consent in this case?

15 A. I do not recall who. I recall that I did
16 not myself, that the fellow did.

17 Q. And the fellow was Dr. Zhang?

18 A. Yes.

19 Q. So Dr. Zhang is the one who obtained
20 Mr. Shamon's consent in this case?

21 A. Correct.

22 Q. Did you participate in that process at
23 all?

24 A. Of the consent form?